

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW SOCIETY of
SCOTLAND, Atria One, 144 Morrison Street,
Edinburgh**

Complainers

against

**FIONA McKINNON, McKinnon & Co., 51
Gartcraig Road, Carntyne, Glasgow**

Respondent

1. A Complaint dated 1 December 2020 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Fiona McKinnon, McKinnon & Co., 51 Gartcraig Road, Carntyne, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were three Secondary Complainers: MC; Alan Conroy, Conroy McInnes Limited, 268 Kilmarnock Road, Glasgow; and LG.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged.
4. In terms of its Rules, the Tribunal set the matter down for a virtual procedural hearing on 23 February 2021 and notice thereof was duly served upon the Respondent.
5. At the virtual procedural hearing on 23 February 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented herself. The Tribunal allowed the Respondent four weeks to lodge

Answers and set a virtual procedural hearing for 22 April 2021. Notice thereof was duly served upon the Respondent.

6. At the virtual procedural hearing on 22 April 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented herself. The Tribunal allowed the Respondent further time to lodge Answers and set a virtual procedural hearing for 25 May 2021. Notice thereof was duly served upon the Respondent.
7. At the virtual procedural hearing on 25 May 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented herself. The Tribunal allowed the Respondent further time to lodge Answers. The Tribunal set the matter down for a virtual procedural hearing on 21 July 2021 and a hearing in-person on 25 to 27 August 2021. Notice thereof was duly served upon the Respondent.
8. At the virtual procedural hearing on 21 July 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. On the Fiscal's motion and after hearing evidence from the Clerk regarding service of the notice of hearing, the Tribunal proceeded in the Respondent's absence. On the Fiscal's motion, the Tribunal allowed the Complaint to be amended in terms of the Complainers' Minute of Amendment. The Tribunal continued the case to the hearing in-person already fixed.
9. On 24 August 2021, the Chair, exercising the functions of the Tribunal under Rules 44 and 56, granted the Respondent's motion to adjourn the hearing due to be held on 25 to 27 August 2021. The Respondent was allowed further time to lodge Answers. The Tribunal set the matter down for a virtual procedural hearing on 4 October 2021. Notice thereof was duly served upon the Respondent.
10. At the virtual procedural hearing on 4 October 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Tribunal directed that any Answers should be lodged no later than 25 October 2021. The Tribunal fixed a virtual procedural hearing on 16 December 2021 and a hearing in-person for 12 to 14 January 2022. Notice thereof was duly served upon the Respondent.

11. At the virtual procedural hearing on 16 December 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. Parties indicated they were negotiating a Joint Minute which referred to an amended Complaint. The case was continued to the hearing fixed for 12 January 2022 which would now take place remotely.
12. At the virtual hearing on 12 January 2022, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Tribunal received an amended Complaint dated 6 January 2022 and a signed Joint Minute. Parties made submissions.
13. The Tribunal found the following facts established:-

13.1 The Respondent is Miss Fiona McKinnon who was born on 27 July 1968. She was enrolled as a solicitor on 21 September 1994. The Respondent was an employee with the firm Robertson & Ross, Paisley then Downie, Alton & Co, Glasgow and W.W. & J. McClure Ltd, Glasgow between 1994 and 1996. She was then an employee with Caesar & Howie, Bathgate between 1996 and 1998 and Conroy McInnes, Glasgow between 1998 and 2002. Between 1 April 2002 and 17 April 2017 the Respondent was a partner in the said firm Conroy McInnes, Glasgow. She resigned on 17 April 2017 and on the same day commenced practice as a sole practitioner in the firm of McKinnon & Co, Glasgow where she remains in practice. She holds a current practising certificate.

MC

13.2 The Secondary Complainer MC was involved in a road traffic accident on 4 March 2005. MC instructed the Respondent to represent her in relation to her personal injuries claim on 8 March 2005. Mr Alan Conroy was a partner in the firm and the Secondary Complainer was related to him. On 8 March the Respondent noted details of the accident, the Secondary Complainer's injuries and the name and address of the other driver (referred to as the defender).

- 13.3 On 14 March 2005 the Secondary Complainer forwarded a letter dated 11 March 2005 to the Respondent which she had received from the defender's insurance company, Norwich Union. The insurance company stated that there was no dispute with liability and asked if the Secondary Complainer would be making a claim.
- 13.4 The Respondent wrote to Norwich Union Claims Department on 16 March 2005 advising that she had been consulted by the Secondary Complainer. She asked them to arrange for the repair of the damage caused to the Secondary Complainer's motor vehicle in the accident and intimated her personal injury claim advising that the Secondary Complainer had suffered a whiplash injury and that her symptoms were ongoing.
- The Respondent sent a copy of this letter to the Secondary Complainer and advised that she would contact her once she had heard from the insurance company.
- 13.5 On 11 April 2005 the Respondent spoke to someone at Norwich Union who confirmed that they had received her letter and that liability was not disputed. They advised that arrangements would be made to inspect the Secondary Complainer's car.
- 13.6 Between 11 April and 13 May 2005, the Respondent made and received numerous telephone calls to and from the insurance company and the Secondary Complainer regarding the inspection and repair of her motor vehicle. None of the Respondent's calls to the insurance company related to the Secondary Complainer's personal injury claim.
- 13.7 The Secondary Complainer called the Respondent on 25 May 2005 regarding her case. The Secondary Complainer provided details of her car hire charges, confirmed that her car had been returned to her that day and advised that she was still attending physiotherapy in respect of her injuries. She advised the Respondent that she would keep her informed of progress.

- 13.8 The secondary complainer called the Respondent again on 15 August 2005 to discuss her case and advised that she had been discharged from physiotherapy and was now “90% fit”.
- 13.9 On 14 November 2005 the Secondary Complainer left a message for the Respondent advising that she was receiving physiotherapy again due to further side effects from the accident.
- 13.10 The Respondent did not receive a reply to her letter dated 16 March 2005 to the insurance company and, despite being advised in April 2005 that the insurance company had received her letter and having spoken to the insurance company on the telephone regarding the Secondary Complainer’s motor vehicle, the Respondent did not chase up a response from them in respect of the Secondary Complainer’s personal injury claim during the remainder of 2005.
- 13.11 On 7 February 2006 the Secondary Complainer called the Respondent to discuss her case. Having received no response, she called twice on 8 February 2006. The Respondent then spoke to her on 10 February 2006 and noted that the Secondary Complainer was still attending physiotherapy treatment.
- 13.12 There are no further entries on the Respondent’s file of any work undertaken by her until 12 December 2006 on which date she sent a letter to the Complaints Department of Norwich Union enclosing a copy of her letter dated 16 March 2005 intimating the Secondary Complainer’s claim. She stated that she had never received any formal written correspondence acknowledging her letter although she had made various telephone calls regarding the claim.
- The Respondent intimated a complaint and asked them to acknowledge receipt of her letter of intimation of the claim and to confirm that enquiries regarding this would be progressed.
- 13.13 The Respondent sent a letter to the Secondary Complainer on the same day advising that the insurance company had not been in contact and that she had lodged a complaint about the lack of progress. She stated that she expected to hear from them within a month and would revert to her when this was received.

- 13.14 Having heard nothing further, the secondary complainer called the Respondent on 28 March 2007 seeking an update. There is no record of a response on the Respondent's file.
- 13.15 On 25 July 2007 the Respondent sent a recorded delivery letter to the defender's insurers enclosing further copies of her letters of 16 March 2005 and 12 December 2006. She noted that she had not received any acknowledgement of the claim and sought one within 14 days otherwise she would raise court proceedings.
- 13.16 There is nothing on the Respondent's file so show that she progressed matters for the next 7 months. On 27 February 2008, the Respondent called the defender's insurers and was advised that they had closed the case.
- 13.17 The Respondent sent a fax to the insurers the same day referring to her telephone conversation and stating that it was agreed that the claim would be progressed by correspondence with a view to achieving settlement extrajudicially and that the insurers would provide a letter confirming that they would not take issue with limitation if court proceedings were required. The Respondent confirmed that she would obtain up to date medical evidence.
- 13.18 On the same date the Respondent wrote to the Secondary Complainer enclosing mandates for signature to obtain the medical evidence.
- 13.19 On 7 March 2008 the defender's insurers wrote to the Respondent confirming that liability would not be an issue provided that the medical evidence confirmed a causal link between the accident and the Secondary Complainer's injuries. They confirmed that in light of their delays the matter could be dealt with extrajudicially and they would not take issue with limitation. They sought the medical evidence to enable them to move towards settlement.
- 13.20 On 18 April 2008 the Respondent wrote to the Secondary Complainer's physiotherapist and her GP seeking reports. Both produced reports dated 19 June 2008.

- 13.21 The Respondent sent copies of the reports to the Secondary Complainer who confirmed on 4 July 2008 that she was content for the reports to be issued to the insurers.
- 13.22 There is no record on the Respondent's file of the reports being sent to the insurers and on 26 September 2008 the insurers wrote to the Respondent and advised that they were waiting to hear further from her to move towards settlement.
- 13.23 The Secondary Complainer called the Respondent's firm looking for an update and spoke to another member of staff on 19 November 2008 who advised that the Respondent would chase up the insurers on her return from holiday.
- 13.24 Nothing happened for the next 3 months, and the insurers wrote to the Respondent on 13 February 2009 noting that they had heard nothing since 26 September 2008 despite their agreement to the relaxation of limitation. They stated that unless they heard further within 21 days they would assume that the claim was no longer being pursued and would close their file. The Respondent did not reply to this letter.
- 13.25 The Secondary Complainer called the Respondent's firm on 27 May 2009, 2 November 2009 and 2 February 2010 seeking an update. On the last occasion the Secondary Complainer was told by a member of staff in the firm that the Respondent had not yet heard anything.
- 13.26 Mr Alan Conroy, a partner in the firm, spoke to the Respondent's secretary on 8 February and 23 March 2010 asking her to chase up the Secondary Complainer's claim. The secretary contacted the defender's insurers and was advised that the file had been closed some time ago. They advised that they would call back on 26 March 2010.
- 13.27 Mr Conroy again chased the matter on 6 April 2010. The Respondent's secretary called the Secondary Complainer on 29 April 2010 to advise that the Respondent would contact her once she had chased up the insurers.

- 13.28 The Secondary Complainer heard nothing further and called the Respondent's firm on 2 July 2010, 7 July 2010, 4 October 2010 and 18 November 2010 seeking an update. There is no record of the Respondent responding.
- 13.29 On 24 November 2010 the Respondent wrote to the Secondary Complainer enclosing paperwork in respect of an application for legal aid to advance her claim for compensation.
- 13.30 The Secondary Complainer called the Respondent's firm on 17 December 2010 to ask if the Respondent had spoken to Mr Conroy.
- 13.31 There is nothing further on the Respondent's file until 5 August 2011 when the Respondent's secretary called the Secondary Complainer to advise that the Respondent was out of the office.
- 13.32 On 28 December 2011 the Respondent spoke to the Secondary Complainer and noted her ongoing symptoms. They spoke again on 13 January 2012 when the Secondary Complainer reported ongoing pain in her shoulder.
- 13.33 The Secondary Complainer then called the Respondent's firm on 29 June, 1 July, 3 August and 10 August all 2012 seeking an update from the Respondent. No responses are recorded on the Respondent's file.
- 13.34 On 23 August 2012 the Secondary Complainer spoke to the Respondent's secretary who advised that the Respondent was sending paperwork to the Secondary Complainer. The Secondary Complainer had not received this by 6 September 2012 and she called the Respondent's firm again to advise of this.
- 13.35 There are no records on the Respondent's file until 8 February 2013 when the Respondent called the Secondary Complainer to advise that paperwork had been prepared and would be sent to her.
- 13.36 On 14 February 2013 the Respondent sent a Summary Cause summons to the Sheriff Court. The action was against the defender in a personal capacity. The

address which was used for the defender was the same as the one noted by the Respondent on 8 March 2005. In her covering letter the Respondent stated that the defender's insurers had produced a letter waiving the triennium to allow settlement negotiations to be completed but that those negotiations had not progressed.

- 13.37 The Respondent sent a letter to the Secondary Complainer on the same day confirming what steps had been taken.
- 13.38 The summons was warranted by the Court on 18 February 2013. The Summons required to be served on the defender no less than 21 days before the Return Date, which was stated to be 3 April 2013. The calling date was to be 17 April 2013.
- 13.39 On 11 April 2013 the Respondent advised the Sheriff Court that service had not been effected and sought warrant to re-serve. This was granted by the Court on 17 April 2013.
- 13.40 The Respondent wrote to the Sheriff Clerk on 7 June 2013 advising that she had been on annual leave and on her return, intimation could not be made timeously. She sought a warrant to re-serve the summons. This was granted by the Court on 12 June 2013.
- 13.41 Thereafter the Respondent sought further warrants to re-serve the summons which were granted by the Court on 7 August 2013, 2 October 2013 and 27 November 2013 because service had not been effected on the defender. On the last occasion the matter called in court before the warrant was granted and the Respondent advised the local agent instructed that she was writing to the defender's insurers to see if they would accept service.
- 13.42 The Secondary Complainer called the Respondent's office on 27 November, 2 and 3 December 2013 seeking an update from the Respondent. The Respondent did not respond.

- 13.43 On 21 January 2014 the Respondent again sought warrant to re-serve stating that this was due to the festive holiday periods. Again, this was granted by the Court on 22 January 2014.
- 13.44 On 24 March 2014 KB of firm A wrote to the Respondent to advise that they had been instructed by the insurers. KB noted that the Secondary Complainer's claim had been intimated on 16 March 2005 but that there had been no letter chasing this for over two years until 25 July 2007. On 7 March 2008 the insurers had confirmed that they would not take issue with limitation. KB said that as there was no correspondence from the Respondent over the next eleven months the insurers wrote to the Respondent on 13 February 2009 advising they would close their file if they did not receive a response within 21 days. KB asked why it had taken the Respondent and the Secondary Complainer over 9 years to raise an action.
- 13.45 On 28 March 2014 the Respondent wrote to the Court seeking warrant to re-serve the summons as service had not been formally effected and production of the papers was required on the defender's agents. This was granted by the Court on 2 April 2014. The case was due to call on 28 May 2014.
- 13.46 KB telephoned the Respondent's firm on 28 March and emailed the Respondent on 23 April 2014 advising that the Respondent had not replied to KB's letter of 24 March and had not provided a service copy of the summons. KB advised that she would be moving the Court to dismiss the action when the matter called on the basis that the claim was timebarred.
- 13.47 That same day the Respondent advised KB that she was waiting on the warrant for re-service from the Court.
- 13.48 KB lodged defences averring that the action had timebarred on 5 March 2008 and ought to be dismissed. The Court issued a timetable of procedural steps for the parties and set a provisional date of 10 September 2014 for proof.

- 13.49 On 7 May 2014 KB intimated on the Respondent the defender's incidental application in respect of the issue of timebar and advised that it was scheduled to be heard on 28 May 2014.
- 13.50 The Respondent did not appear at Court on behalf of the Secondary Complainer on 28 May 2014 and accordingly, due to the absence of any appearance by or on behalf of the pursuer, the Court granted the defender's incidental application and dismissed the court action with no expenses due to or by either party.
- 13.51 On 6 June 2014 the Respondent wrote to the Secondary Complainer advising that a timetable had been issued by the Court to progress her action. She advised the Secondary Complainer that her attendance would be required at a diet of proof on 10 September 2014 but that the Respondent would keep her advised of developments.
- 13.52 There are no further entries on the Respondent's file until 8 September 2014 when the Secondary Complainer called the Respondent seeking an update. The Respondent spoke to the Secondary Complainer on that day and the following day. The Respondent's file notes were brief and do not make it clear what the Secondary Complainer was told.
- 13.53 There is nothing further on the Respondent's file until 30 October 2014 when the Secondary Complainer called again seeking an update. The Respondent's secretary spoke to the Secondary Complainer advising that the Respondent was in negotiations with the Court in relation to assigning a date for proof and that she would be in touch.
- 13.54 There are no further entries on the Respondent's file in 2014. On 23 January 2015 and 13 February 2015 the Secondary Complainer called the Respondent's office seeking updates. Mr Conroy contacted the Respondent on 3 February 2015 asking her to call the Secondary Complainer.
- 13.55 The Respondent met with the Secondary Complainer on 27 February 2015 to obtain an update regarding her injuries and ongoing issues.

- 13.56 Between April and August 2015, the Secondary Complainer called the Respondent's office on a number of occasions seeking an update as matters did not seem to be progressing.
- 13.57 On 14 September 2015 the Secondary Complainer called the Respondent's office advising that she had not yet received copy paperwork which the Respondent had advised she was sending to the Court. The Respondent spoke to the Secondary Complainer on 14 October 2015.
- 13.58 On 20 November 2015 the Secondary Complainer again contacted the Respondent's office seeking an update and she understood that the Respondent had been due to hear from the Court at the end of October.
- 13.59 In January 2016 the Secondary Complainer was advised that paperwork would be sent to her but she had received nothing by the end of that month.
- 13.60 On 4 February 2016 the Respondent sent an Initial Writ to the All-Scotland Specialist Personal Injury Court for warranting. Said writ craved damages in the sum of £8,000. The Respondent also sent a copy to the Secondary Complainer.
- 13.61 There are no entries on the Respondent's file for the next 3 months until 6 May 2016 when the Secondary Complainer called seeking an update. The Respondent's secretary called her back on 16 May 2016 advising that the Respondent was waiting on a date from the Court and hoped to revert to her by the first week of June.
- 13.62 The Secondary Complainer sought updates on 6 July, 5 August, 7 and 14 October and 9 December 2016. There is no information on the Respondent's file of any progress in the action during these months.
- 13.63 On 22 March 2017 the Secondary Complainer sent an email to the Respondent stating that she wanted to move forward with her claim and asked for information which she said she had requested the previous week.

- 13.64 On 31 March 2017 the Respondent replied apologising for the delay in replying and advising that she and Mr Conroy were ending their partnership. She advised the Secondary Complainer that she would be content to continue to represent her if the Secondary Complainer wished to instruct her directly. In which event she advised that the Secondary Complainer should apply for civil legal aid and that a claim could be raised in either the Sheriff Court or the All-Scotland Specialist Personal Injury Court.
- 13.65 On 1 April 2017 the Secondary Complainer replied advising that she wanted the Respondent to proceed with a Sheriff Court action as soon as possible.
- 13.66 The Respondent ceased to be a partner of the firm on 17 April 2017 and commenced as a partner of McKinnon & Co on 18 April 2017.
- 13.67 On 16 May 2017 the Respondent met with the Secondary Complainer and Mr Conroy in response to the Secondary Complainer's complaint about the lack of progress and it was agreed that matters would now progress quickly.
- 13.68 Having heard nothing further since that meeting the Secondary Complainer sent an email to the Respondent on 26 June 2017 seeking an update.
- 13.69 The Respondent did not reply, and the secondary complainer sent an email to Mr Conroy on 4 July 2017. She stated: "*from what Fiona intimated when you and I were present we would have progressed within 4 weeks as to finding out if the insurance company were able to settle, if this wasn't the case she would be seeking a court date.*" The Secondary Complainer asked Mr Conroy to find out what was happening.
- 13.70 On 25 July 2017 the Respondent advised the Secondary Complainer that she was finalising paperwork to progress her claim. She advised that she would meet with Mr Conroy and revert with further information before the end of the following week.
- 13.71 On 31 August 2017, the Respondent advised the Secondary Complainer that she had discussed matters with Mr Conroy and had agreed that matters would be

progressed quickly. She advised that she would write to the Secondary Complainer the following week.

- 13.72 On 26 September 2017 the Secondary Complainer sent an email to Mr Conroy advising that she had not received paperwork from the Respondent and asked him to chase the matter.
- 13.73 On 11 October 2017 the Respondent emailed the Secondary Complainer advising that she was finalising paperwork which would be emailed to her before the end of the week.
- 13.74 The Secondary Complainer did not receive any paperwork from the Respondent and she asked Mr Conroy to make enquiries for her on 23 October and 1 November 2017.
- 13.75 On 2 November 2017 the Secondary Complainer sent an email to the Respondent advising that her patience had been exhausted and that unless she received proof of positive progression by 17 November 2017 she would complain to the Law Society.
- 13.76 The Respondent replied on 3 November 2017 confirming that the Secondary Complainer would receive the paperwork the following week.
- 13.77 The Secondary Complainer received nothing from the Respondent and as no progress had been made in relation to her claim she submitted a complaint form to the Scottish Legal Complaints Commission on or around 20 November 2017.

Alan Conroy and MW

- 13.78 The Respondent was a partner of the secondary complainer Mr Conroy in the firm Conroy McInnes between 1 April 2002 and 17 April 2017. The partnership ceased on that date and the Respondent commenced practice on her own account as McKinnon & Co. Mr Conroy continued to practice as Conroy McInnes Limited.

- 13.79 On her departure the Respondent, with the agreement of the Secondary Complainer Mr Conroy, took a number of files with her to her new practice. These files included those of clients CE, LD, JC, MC and MW.
- 13.80 As the Client Relations Manager of the firm Mr Conroy had received complaints made to the SLCC by the clients MW and MC both of whom had personal injury claims which the Respondent had been instructed in. Mr Conroy had also received a letter dated 2 February 2018 from Firm X on behalf of the client AG in respect of a claim which was being made against the firm in relation to the Respondent's handling of AG's personal injury claim.
- 13.81 On 7 February 2018 Mr Conroy wrote to the Respondent in relation to a meeting which was due to take place between them on 14 February 2018. He asked her to bring to the meeting files for clients MW, MC and AG. He stated that it was imperative that he perused the files as Client Relations Manager of the firm in respect of MW's complaint to the SLCC and the claim received from Firm X who now acted on behalf of the client AG.
- He stated that MW had asked him to establish what happened to her claim and was awaiting an update and he required to investigate whether there was any merit in MW's complaint.
- He suggested that it would be helpful if she could drop the files off at his office prior to their meeting to enable him to peruse them.
- 13.82 With reference to a meeting between Mr Conroy and the Respondent on 27 February 2018 Mr Conroy sent a letter by email to the Respondent on 1 March 2018. In relation to the client AG he stated that having read the file the Respondent was open to a claim for negligence. He noted that the Respondent had agreed to provide him with a draft letter of response to Firm X by 2 March 2018. He suggested that counsel's opinion should be obtained on the value of the claim. He noted with concern that the Respondent had not previously intimated to him letters from Firm X dated 3 September and 3 November 2017 which could prejudice his position since the claim could have been addressed several months previously in light of a threat of court action.

In relation to clients MW and MC he noted that the Respondent had confirmed that he would have the files by 2 March 2018.

13.83 On 2 March 2018, the Respondent sent an email to Mr Conroy advising that she would bring the files for clients MW and MC to his office on 5 March 2018.

13.84 She did not do so and on 9 March 2018 Mr Conroy sent a further letter by email to the Respondent noting that he had heard nothing further from her and was becoming increasingly concerned by the Respondent's failure to produce the files. He confirmed that he could not carry out his duty as Client Relations Manager in relation to the client complaints without the files.

Mr Conroy stated that during a meeting between the Respondent and himself in April 2017 the Respondent had advised him that, for the purposes of the firm's indemnity insurance, she was not aware of any matters which might give rise to a claim. He stated that he could have ring-fenced the Indemnity Insurance for claims but did not do so on the basis of the Respondent's position. However, it was clear from the file that she was aware or reasonably should have been aware of the potential for a claim by AG based on the fact that she had not raised a court action on behalf of the client within the Triennium.

Firm X had written to the Respondent by recorded delivery on 3 September and 3 November 2017 regarding AG's claim for damages based on the Respondent's negligence but the Respondent did not inform Mr Conroy or provide him with copies of the letters. Mr Conroy only found out about the matter when Firm X wrote to him on 2 February 2018 and thereafter was not able to meet with the Respondent until 27 February 2018 due to her unavailability.

13.85 The Respondent did not provide Mr Conroy with the requested files and he sent a further letter to her by email on 23 March 2018 seeking all of the files listed in his email of 1 March 2018. He advised that he had received another call from MW regarding her case.

13.86 Mr Conroy corresponded with Firm X in relation to the claim by AG. He agreed a settlement of AG's claim in the sum of £6,597.10. He wrote to the Respondent on 30 August 2018 advising her of this and also stated that including outlays he had incurred a total cost of £7,297.10 *"as a result of your negligence and your failing to advise me of the potential for a claim prior to my agreeing to take on the claims liability for the firm"*.

The Respondent has still not provided Mr Conroy with the files for the clients MW and MC, and he asked her to provide him with them. He noted that MW continued to telephone him on a regular basis and stated *"I find it concerning that you have not provided me with any of the files requested apart from that of [AG]. Again, unless you confirm within 14 days that you will forward me the file of [MW] without further delay, I will have no option but to report the matter to the [SLCC] which this client has recently asked me to do in the absence of any satisfactory response from you."*

13.87 MW wrote to Mr Conroy on 12 September 2018 asking him to look into the personal injury claim which the Respondent had been instructed in. She advised that the Respondent had not responded to her requests for information and despite her son attending at the Respondent's office the Respondent had still not reverted to MW.

13.88 On 21 September 2018 the Respondent wrote to Mr Conroy. In relation to the clients' files she stated as follows:

- i) MW - she stated that she had begun preparation of the final advice and assistance account and that the file would be returned to Mr Conroy on completion of that. She stated that due to annual leave she would have the file delivered to him no later than 8 October 2018.
- ii) MC – she advised that she was dealing with the SLCC and the Law Society directly herself.

13.89 The Respondent's letter of 21 September was delivered to Mr Conroy's office on 30 September 2018. He followed this up by writing to the Respondent on 4 October 2018. He stated that he had made repeated requests for MW's file and

the Respondent had made various excuses and had failed to produce the file. He further stated that he had recently received a letter from MW which he required to answer and that it was incumbent on him Client Relations Manager to fully investigate the matter. He stated that the Respondent had frustrated him from doing so over a lengthy period and that if he did not receive the file forthwith then he would report the Respondent's conduct to the SLCC. He noted that he believed the Respondent to be out of time to make an advice and assistance claim in any event.

- 13.90 The Respondent did not provide Mr Conroy with the requested files and on or around 20 December 2018 Mr Conroy submitted a complaint to the SLCC on his own behalf and also on behalf of MW.

Failure to Respond to the Law Society in relation to complaint by Alan Conroy and MW

- 13.91 On 15 May 2019 the Law Society intimated the complaint reference 2941 regarding the Respondent's failure to provide Mr Conroy with the client files, including the file of the MW, and the letters averred on the Respondent by email. The email stated that: "*The Society has a statutory obligation to investigate this matter and you have a professional obligation to respond.*" The solicitor was asked to provide a written response to the complaint as well as her business files within 21 days failing which Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 ("1980 Act") and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 ("2007 Act") would be issued to her. The Respondent was also advised that any failure or delay by her in responding may result in a further conduct complaint.
- 13.92 The Respondent telephoned the Law Society on 7 June 2019 seeking an extension of time to respond. A further week was granted.
- 13.93 On 20 June 2019 the Law Society issued to the Respondent a Notice in terms of section 48(2) of the 2007 act in which she was called upon to deliver "*All documents in your possession or control sent from [JW Solicitors] to you in relation to their client [AG]*", together with an explanation of the matters to

which the complaint related. The Respondent was advised that if she did not respond within 21 days then a further conduct complaint may be issued.

- 13.94 On the same date the Law Society also issued to the Respondent a Notice in terms of section 15 (2)(i)(i) of the 1980 Act requiring her to send a response to the complaint as previously requested together with an explanation for the delay in replying within 21 days.
- 13.95 The Respondent did not respond to either Notice.
- 13.96 The Secondary Complainer Mr Conroy agreed to add a further issue to his complaint in relation to the Respondent's failure to respond to the Law Society.
- 13.97 On 9 October 2019, the Law Society intimated the additional complaint to the Respondent. The Respondent was asked to provide her response to the additional complaint within 21 days together with her relevant business files.
- 13.98 The Respondent did not respond.
- 13.98A In respect of the complaint made by Alan Conroy on behalf of MW reference number 2942 the Law Society intimated the complaint on the 23 May 2019. The email stated that: *"The Society has a statutory obligation to investigate this matter and you have a professional obligation to respond."* The solicitor was asked to provide a written response to the complaint as well as her business files within 21 days failing which Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 ("1980 Act") and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 ("2007 Act") would be issued to her. The Respondent was also advised that any failure or delay by her in responding may result in a further conduct complaint.
- 13.98B On 20 June 2019 the Law Society issued to the Respondent a Notice in terms of section 48(2) of the 2007 Act. Respondent was advised that if she did not respond within 21 days then a further conduct complaint may be issued.

- 13.98C On the same date the Law Society also issued to the Respondent a Notice in terms of section 15 (2)(i)(i) of the 1980 Act requiring her to send a response to the complaint as previously requested together with an explanation for the delay in replying within 21 days.
- 13.98D The Respondent did not respond to either Notice.
- 13.98E The Secondary Complainer MW Mr Conroy agreed to add a further issue to his complaint in relation to the Respondent's failure to respond to the Law Society.
- 13.98F On 9 October 2019 the Law Society intimated the additional complaint to the Respondent. The Respondent was asked to provide her response to the additional complaint within 21 days together with her relevant business files.
- 13.98G The Respondent did not respond.

LG

- 13.99 In January 2011 the Secondary Complainer LG instructed the Respondent in respect of her separation from her husband.
- 13.100 Divorce proceedings were subsequently raised by LG's husband in August 2013.
- 13.101 The files which the Respondent provided to the Law Society in response to its request in relation to the investigation of a complaint by LG contain correspondence up to and including 29 December 2015. There are no entries after that date.
- 13.102 On or around 18 February 2017 LG instructed another solicitor, MM of Firm HR to represent her, and on 24 February MM wrote to the Respondent enclosing a mandate signed by LG seeking the full file of papers as a matter of urgency. MM stated: "*You will be aware that a Proof is due to take place in this case on 23rd March 2017 and so it is essential that you do forward the papers to us without delay.*"

The mandate, which was signed by LG on 18 February 2017, stated that LG authorised and instructed the Respondent's firm to release to the firm HR *"my full file of papers relative to my divorce and contact between my ex-partner ...and my children."*

- 13.103 On 2 March 2017 the Respondent sent an email to MM advising that she had uplifted MM's letter from Conroy McInnes' office the previous day. She confirmed that she would implement the mandate *"upon receipt of an Irrevocable Mandate from [LG] in respect of the recovery of my fees in relation to recovery/preservation."*

The Respondent attached a style mandate for signature and return by LG and added *"on the basis that I will forward the files to you next week, prior to accounts being prepared and the papers will be returned to me to allow the relevant accounts to be prepared."* The Respondent advised that LG has been refused legal aid but had been in receipt of civil advice and assistance.

The terms of the mandate provided by the Respondent stated that: *"I, [LG] ...hereby authorise and instruct payment of all fees due to [the Respondent's firm] ...to be paid as a first preference from any money or property recovered or preserved in relation to my divorce proceedings. I hereby instruct any Solicitors involved in the settlement transaction to retain sufficient funds to meet the whole fees due by me to [the Respondent's firm] in priority to any other fees and expenses due and payable, and to pay them. subject to the relevant instructions from the Scottish Legal Aid Board, in relation to their recovery/preservation procedures. I hereby declare this Mandate to be irrevocable."*

- 13.104 MM spoke to the Respondent on 3 March 2017. The Respondent advised that she would require the mandate, or an alternative version of the mandate, to be signed.

MM expressed the concerns surrounding the Respondent's handling of LG's case and advised that LG was unaware that she was not in receipt of legal aid. MM sought confirmation from the Respondent as to whether or not she would be making a charge beyond that which was covered by legal aid.

MM noted that the Respondent stated that she would require to be paid for the work she had carried out. MM sought clarification as to whether or not the Respondent would be charging legal aid rates.

MM also noted that the Respondent stated that she was not willing to commit herself in relation to fees and that it was inappropriate for her to do so and that LG was aware that she would incur a charge which would be deducted from any recovery that was made.

13.105 By interlocutor of 9 March 2017 a Diet of Proof fixed for 27 March 2017 was discharged and the case sisted to enable, among other things, LG's application for legal aid to be determined

13.106 On 4 April 2017 MM sent an email to the Respondent advising that LG was not prepared to sign the Respondent's mandate and that she had understood that she was in receipt of legal aid. MM also stated that the mandate was inappropriate in its terms as the Respondent gave no indication as to the extent of any charges which she claimed to due from LG.

MM advised that the Respondent's position seemed to be contrary to the guidance issued by the Law Society and asked the Respondent to reconsider her position as a matter of urgency and to forward the files to MM in terms of the mandate sent to her on 24 February 2017.

13.107 Having received no response from the Respondent MM sent a letter to the Respondent's firm on 12 April 2017 asking that the Respondent reply immediately regarding the provision of the files failing which he would advise LG to refer the matter to the Law Society.

MM advised that LG had been granted legal aid. He referred to correspondence from the Respondent to LG in 2013 confirming that an application for legal aid had been submitted by the Respondent and asked the Respondent to provide copies of correspondence advising LG that her application had been refused and that the Respondent would be acting on a privately funded basis.

- 13.108 The Respondent left the firm of Conroy McInnes on 17 April 2017.
- 13.109 On 18 May 2017 the Respondent wrote to MM from her new firm stating that she had understood that an email dated 13 April 2017 had been sent to him providing an update. She confirmed that she had resigned from Conroy McInnes and stated that she anticipated being in a position to view LG's papers the following week and would revert to him.
- 13.110 The Respondent did not revert to MM and did not provide him with LG's files.
- 13.111 On 5 July 2017 LG sent a formal letter of complaint to the Respondent and then submitted a complaint to the SLCC on or around 20 August 2017.

Failure to respond to the SLCC and the Law Society in relation to LG's complaint

- 13.112 The SLCC wrote to the Respondent and to the aforementioned Alan Conroy on 10 May 2018 asking Mr Conroy to provide all files relative to LG's case within 14 days.
- 13.113 Mr Conroy replied on 17 May 2018 advising that he had never had sight of LG's files. He advised that he had asked the Respondent on various occasions to provide the files so that he could deal with the complaint as Client Relations Manager but she had not done so despite advising that she would.
- 13.114 On 21 May 2018 the SLCC wrote to the Respondent asking that she forward LG's files within 14 days.
- 13.115 The Respondent did not reply and the SLCC wrote to her again on 5 June 2018 asking her to provide the files by 19 June 2018.
- 13.116 The Respondent sent one file to the SLCC which they acknowledged on 13 July 2018. However, the last entry on the file was dated 19 September 2013 and the

SLCC wrote to the Respondent on 16 July 2018 asking her to confirm by 23 July 2018 if she held further files and that she had acted for LG until early in 2017.

- 13.117 On 25 July 2018 the Respondent sent an email to the SLCC confirming that there was more than one file. She advised that she would check the position on her return from annual leave on 31 July 2018 and provide an update by the end of the following week.
- 13.118 The SLCC replied warning the Respondent that LG had been considering adding an additional issue of complaint regarding the Respondent's lack of co-operation and suggesting that she treat the matter with some urgency.
- 13.119 Having heard nothing further from the Respondent the SLCC sent an email to her on 4 September 2018 and 8 October 2018 asking for the files and a response from the Respondent.
- 13.120 The Respondent did not reply and LG completed an additional issue form on 20 October 2018 in respect of the Respondent's failure to co-operate with the SLCC's investigation into her complaint.
- 13.121 The SLCC had not heard from the Respondent since 25 July 2018 and accordingly sent her a further email on 29 October 2018 asking her to confirm that she would now provide the files.
- 13.122 The Respondent replied the following day apologising and confirming that she would forward the remaining papers to the SLCC by the end of that week.
- 13.123 The Respondent did not forward the remaining files to the SLCC and on 5 November 2018 the SLCC advised the Respondent that LG was proceeding with an additional issue of complaint in respect of her failure to co-operate with the SLCC investigation.
- 13.124 On 7 December 2018 the SLCC sent an email to the Respondent advising that the additional issue had been classed as eligible for investigation by the Law

Society. The Respondent was asked to forward the remaining files without further delay.

- 13.125 On 4 January 2019 the SLCC wrote to the Respondent enclosing a Notice under section 17(1) of the Legal Profession and Legal Aid (Scotland) Act 2007 (2007 Act) requiring her to produce the files by 25 January 2019.
- 13.126 The SLCC wrote to the respondent again on 28 January 2019 requesting the files and advising that they may pass the matter to their solicitor to initiate legal action if she did not produce the files.
- 13.127 The SLCC did not receive the files from the Respondent and they instructed the firm HM to seek recovery. HM sent an email to the Respondent on 18 February 2019 asking her to confirm by 22 February 2019 that the files would be produced and advising that they intended to take instructions from the SLCC to commence formal proceedings to recover the files.
- 13.128 The Respondent replied on 22 February 2019 confirming that the files would be forwarded to the SLCC and should be with them by 27 February 2019.
- 13.129 The SLCC did not receive the files and HM sent a further email to the Respondent on 28 February 2019 asking if she intended to send the files. The Respondent confirmed that the SLCC would have the files no later than 5 March 2019.
- 13.130 On 6 March 2019 the Respondent sent a file to the SLCC. The file only contained entries up to 9 December 2014. The Respondent then sent a further two files to the SLCC on 20 March 2019. These further files contained entries up to 29 December 2015.
- 13.131 The SLCC sent an email to the Respondent on 22 May 2019 asking her to provide further files within seven days. The Respondent did not reply.
- 13.132 On 10 October 2019 the Law Society intimated a complaint on the Respondent in respect of, among other things, her failure to implement the mandate and

failure to co-operate timeously with the SLCC investigation. The Respondent was asked to provide a written response to the complaint within 21 days failing which Notices in term of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 and section 48(2) of the 2007 Act would be issued to her. The Respondent was advised that a further conduct complaint may be intimated if she failed to respond.

13.133 The Respondent did not respond and on 6 November 2019 the Law Society issued the aforementioned Notices to the Respondent by recorded delivery seeking the Respondent's response to the complaint within 21 days together with an explanation for the delay in responding. The Respondent was warned that if she failed to respond then a further issue of complaint in respect of that failure would be made either by LG or the Law Society.

13.134 The Respondent did not respond to either Notice and on 27 July 2020 the Law Society intimated a further complaint to the Respondent by email in respect of her failure to respond to the Law Society. The Respondent was asked to provide a written response to the additional complaint within 21 days. The Respondent did not respond.

14. Having regard to the foregoing facts and submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct singly and *in cumulo* in respect that she:-
- a) Failed to act in the best interests of MC and failed over a period of 12 years to progress her personal injury claim;
 - b) Failed to communicate effectively with MC between March 2005 and November 2017 in relation to the progress of her personal injury claim;
 - c) Failed to communicate effectively with Alan Conroy in that she failed or unduly delayed for several months in providing him with letters notifying of a claim against his firm in respect of the Respondent's negligence in dealing with a personal injury case;

- d) Failed or unduly delayed for a period in excess of 10 months in providing the secondary complainer Alan Conroy with the file of MW, to enable him to investigate a complaint by MW;
- e) Failed or unduly delayed in implementing a mandate from the solicitor representing LG for a period in excess of two years;
- f) Failed or unduly delayed to respond promptly and efficiently to correspondence and statutory notices received from the SLCC and its solicitor in respect of its regulatory function;
- g) Failed or unduly delayed to respond promptly and efficiently to correspondence and statutory notices received from the Council in respect of its regulatory function in relation to three complaints.

15. Having heard further submissions in mitigation and on publicity and expenses, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 12 January 2022. The Tribunal having considered the amended Complaint dated 6 January 2022 at the instance of the Council of the Law Society of Scotland against Fiona McKinnon, McKinnon & Co., 51 Gartcraig Road, Carntyne, Glasgow; Find the Respondent guilty of professional misconduct singly and *in cumulo* in respect that she (a) failed to act in the best interests of MC and failed over a period of 12 years to progress her personal injury claim; (b) failed to communicate effectively with MC between March 2005 and November 2017 in relation to the progress of her personal injury claim; (c) failed to communicate effectively with Alan Conroy in that she failed or unduly delayed for several months in providing him with letters notifying of a claim against his firm in respect of the Respondent's negligence in dealing with a personal injury case; (d) failed or unduly delayed for a period in excess of 10 months in providing the secondary complainer Alan Conroy the file of MW, to enable him to investigate a complaint by MW; (e) failed or unduly delayed in implementing a mandate from the solicitor representing LG for a period in excess of two years; (f) failed or unduly delayed to respond promptly and efficiently to correspondence and statutory notices received from the SLCC and its solicitor in respect of its regulatory function; and (g) failed or unduly delayed to respond promptly and efficiently to correspondence

and statutory notices received from the Council in respect of its regulatory function in relation to three complaints; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of two years with effect from 12 April 2022, any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit her to acting as a qualified assistant to such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person other than the Respondent's former partner; and Allow the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation or an updated written claim for compensation with the Tribunal Office, if so advised.

(signed)

Kenneth Paterson

Vice Chair

16. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on **16 FEBRUARY 2022**.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chair

NOTE

At the Hearing on 12 January 2022, the Tribunal had before it the amended Complaint dated 6 January 2022; the signed Joint Minute of Admissions; five Inventories of Productions for the Complainers; a List of Authorities for the Complainers; and a List of Authorities for the Respondent. By way of the Joint Minute, the Respondent admitted the averments of fact, duty and misconduct contained in the amended Complaint of 6 January 2022. Parties indicated no evidence would be led and they would proceed by way of submissions.

SUBMISSIONS FOR THE COMPLAINERS

With reference to the MC case, the Fiscal said the Respondent was very slow to act and instigate court proceedings. There was an obligation on the Respondent to protect MC's position. The Secondary Complainer repeatedly contacted the Respondent and asked Alan Conroy to help. The summary cause action was dismissed when the Respondent failed to appear at court. The Fiscal said it was not clear what the Respondent told the Secondary Complainer about the action. He invited the Tribunal to "read between the lines" about what the Respondent was thinking. The Respondent's secretary gave incorrect information to the Secondary Complainer. The Complainers could not say whether this was done on the Respondent's instruction. At a meeting in February 2015, the Respondent did not tell the Secondary Complainer her case had been dismissed, that the claim was lost, and further action was required. The Fiscal said the Respondent was not open and honest and did not act in the client's best interests.

Mr Macreath objected to the Fiscal's submission on the basis that he had moved into an area not covered by the amended Complaint and Joint Minute. The Respondent's position was that she did not know the action had been dismissed. The Fiscal said it was not unreasonable for the Complainers to make observations on the agreed facts. He did not question the Respondent's honesty or integrity. However, a reasonable solicitor would have advised the client of the situation. It was appropriate that he described the actions the Respondent ought to have taken. Mr Macreath referred to Singleton-v-The Law Society [2005] EWHC 2915 Admin and the issue of fair notice. He invited the Tribunal to hear the submissions under reservation and the Tribunal proceeded on this basis.

The Fiscal recommenced his submission. He noted that the Respondent must have known about the dismissal of the action because that information was contained within her file. In February 2016, she raised another action. This would not have been necessary if the first one was extant. The Respondent

applied for legal aid a year and a half after the first action. Nothing happened on the file for long periods. Eventually, the Secondary Complainers' patience was exhausted and she made a complaint.

With reference to the Alan Conroy and MW complaint, the Fiscal explained that when the partnership ended, the Respondent took some files with her. These related to personal injury actions. Alan Conroy wrote to the Respondent about the files. He needed them to investigate complaints. Despite repeated requests, the Respondent failed to provide the files. The Respondent told Alan Conroy she was not aware of any matters giving rise to a claim when the partnership ended. However, she must have known about the potential for a claim from AG. Mr Conroy was not able to use this information to ring-fence insurance cover. MW asked Alan Conroy to help her get a response from the Respondent. However, she died before the complaint was resolved. The Respondent failed to respond to her regulators and did not provide any files.

The LG case involved divorce proceedings which started in August 2013. The Complainers have seen correspondence files up to December 2015. However, there are no entries after that date. A mandate was signed in February 2017. The Respondent attempted to re-word the mandate in order to recover fees. The Secondary Complainer did not know she did not have legal aid. The Respondent did not comply with the mandate. A complaint was made. One file was sent to the SLCC. It made repeated requests for the other files. Two were sent in 2019. The Respondent made no response to Law Society notices and requests for information.

The Fiscal explained that various Codes and Practice Rules covered the period of alleged professional misconduct. In summary, the alleged breaches of rules related to: failing to act in the client's best interests; failing to communicate effectively; and failing to complete work within a reasonable time and with proper competence and skill. The Respondent had also failed to act in a manner of mutual trust and confidence with other solicitors. She failed to comply with mandates. She consistently delayed in dealing with matters for a significant period and impeded the regulatory investigations into her conduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath noted that the averments of fact, duty and misconduct in the amended Complaint were admitted by the Joint Minute. It was for the Tribunal to make a decision on professional misconduct but the Respondent accepted that the conduct was capable of meeting the Sharp test, some matters singly and some *in cumulo*. Mr Macreath referred to Bolton-v- The Law Society [1994] WLR 512. He noted that dishonesty was not alleged in the present case. He accepted that solicitors must cooperate with

regulators. They must be transparent and act with candour. They must make timeous responses. They must comply with mandates. The Respondent's conduct meets the Sharp test even if dishonesty was not averred.

In answer to a question from the Tribunal, the Fiscal confirmed that the Law Society did not say the Respondent was dishonest, rather that she failed to act in her clients' best interests. Mr Macreath noted there were no averment of dishonesty or allegation of a breach of Rule B1.2. It was therefore not open to the Tribunal to consider these matters.

DECISION

On the basis of the admitted facts, the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in the manner set out in the amended Complaint.

Solicitors must always act in the best interests of their clients. They must communicate effectively. They must only act in those matters where they are competent. They must only accept instructions where the matter can be carried out adequately and completely within a reasonable time. Solicitors must exercise the level of skill appropriate to the matter. They must act with other regulated persons in a manner of mutual trust and confidence. Solicitors must deal with the Complainers in an open, timely and cooperative manner so as to enable the Council to properly exercise and fulfil its regulatory functions. They must also cooperate with the SLCC. Failure or delay to cooperate is prejudicial to the client and the profession and is likely to bring the profession into disrepute. Solicitors must respond to mandates timeously. The Respondent failed to meet her obligations in all these respects.

The Tribunal considered whether the Respondent's conduct met the test set out in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313. According to that case,

"There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made."

Considering all the circumstances of the case, the Tribunal considered that the Respondent's conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. Failure to progress a straightforward personal injury claim for 12 years was unconscionable. Throughout that whole period, the Secondary Complainer repeatedly attempted to contact the Respondent seeking updates on progress and the Respondent failed to communicate with her. The Respondent failed to provide two letters to her former partner about a potential negligence claim. This prejudiced her partner's ability to resolve the matter. She failed to provide him with files for 10 months despite repeated requests and assurances by her that she would deliver them. This prevented her partner from dealing with MW's complaint and she died before the matter was resolved. The Respondent failed to implement a mandate for two years in LG's case. She had no grounds to exercise a lien. Failure to implement a mandate hampers the new solicitor which is prejudicial to the profession and its standing in the eyes of the public as well as being detrimental to the client. This Tribunal has repeatedly held that failure to obtemper a mandate can constitute professional misconduct. The SLCC and the Law Society were obliged to make enquiries into the complaints. The Respondent's attitude towards these regulators was appalling. She failed to provide any explanations. She failed to provide files. Her repeated failures took place over many years. Both regulatory bodies gave her many opportunities to respond but she chose to ignore them. This is completely unacceptable. The Tribunal was satisfied that each averment of misconduct constituted professional misconduct singly and *in cumulo*.

SUBMISSIONS IN MITIGATION

The Fiscal confirmed there were no previous conduct findings on the Respondent's record card.

Mr Macreath outlined the Respondent's employment history. She is currently a sole practitioner. Most of her work involves family law in relation to children's contact and residence. She does some criminal defence work which is funded by legal aid. She does a small amount of miscellaneous work including criminal injuries compensation claims. However, she no longer deals with personal injury claims. The Respondent employs one secretary. She is heavily involved with the Glasgow Bar Association. She was recently Vice President and President and has a continuing role as immediate past President. Through membership of the Glasgow Bar Association, she has contributed to advancing the interests of the profession. She had some involvement in recent negotiations on legal aid.

In Mr Macreath's submission, there were fundamentally two issues: the unconscionable delay in progressing MC's claim and a lack of effective communication. It is not uncommon for solicitors to allow cases to become sterile, particularly if the solicitor is out of their depth and not coping. However,

this was not the case here. The case commenced properly. However, on any view, 12 years was an unconscionable delay. There was no proper explanation for it. There was no legal aid. The client was related to her partner. The Respondent tells him she misunderstood the Interlocutors of Court. At some point she received the extract decree. She tells him that she discussed this with the Secondary Complainer, and the potential for a negligence claim against the firm. However, the file is silent on this.

The Respondent and her former partner are still in dispute. There are live proceedings at Paisley Sheriff Court. Mr Macreath noted that notification of the claim in the AG case came some months after the partnership ended. Alan Conroy did not know there was a potential claim at the time he was organising insurance cover. There was therefore a lack of effective communication with a fellow professional. Mr Macreath apologised to Alan Conroy on the Respondent's behalf. He recognised that AG's claim was settled at AC's expense. The Respondent has told Mr Macreath that on leaving the partnership she had an indemnification, but Mr Macreath had not seen it.

Mr Macreath admitted the MW files ought to have been provided timeously to Mr Conroy. There is an ongoing obligation on all solicitors to ensure that cases are dealt with expeditiously.

The LG files were delivered to the SLCC. However, the Respondent had retained them for a period knowing that they were required for a proof. Solicitors must make sure they do not prejudice litigation.

The SLCC has recently publicised the requirement on professionals to provide files. A prompt response to regulators is part of the professional life. The Respondent accepts her failures.

Mr Macreath referred to staffing difficulties experienced by the Respondent. Previously she had two part time secretaries. One was absent for a period of time. The Respondent is a court practitioner and was therefore not always present at the office.

Referring to his List of Authorities, Mr Macreath described the circumstances in Robertson-v-The Council of the Law Society of Scotland [2015] CSIH 95 and the Court's view that the restriction imposed by the Tribunal was plainly wrong and unjustified. In that case, there was no dishonesty or any serious attack on integrity. Instead, the Respondent in that case was said to have been "reckless and cavalier". Mr Macreath also referred to the Tribunal's function as not necessarily being punitive but existing to vindicate the reputation of the profession. He asked the Tribunal to consider the risk of repetition and in that context again referred to Bolton-v-The Law Society [1994] WLR 512.

In Mr Macreath's submission, a restriction was not necessary in the present case. The misconduct was restricted to obligations relating to the best interests of clients, communication, mandates and complying with regulators. Mr Macreath referred to some of the cases on the Complainers' List of Authorities and sought to distinguish them.

Mr Macreath said the Respondent had expressed contrition to him. She had been fixated on her partnership dispute to the detriment of other matters. She had lost perspective. She had continued to deal with her roles in the Glasgow Bar Association throughout this period.

DECISION ON SANCTION

Professional misconduct in this case was mid-range. Although there was no dishonesty or lack of integrity, failure to progress a claim for 12 years was an egregious breach of a solicitor's obligations and the Respondent's actions thereafter in failing to cooperate with her former partner, failing to obtemper mandates, and deal properly with the SLCC and Law Society, were atrocious. The Respondent's conduct involved more than one case and repeated failures to cooperate and communicate.

Aggravating factors included the lack of insight demonstrated by the Respondent. Her representative said she had expressed contrition to him, but no information was provided regarding why the misconduct had occurred or the steps taken to avoid those circumstances occurring in future. The conduct was likely to seriously damage the reputation of the profession and was a danger to the public. It was not restricted to one file or client and it persisted for many years. She had not done anything to resolve matters and one of the clients died before her complaint was resolved. A mitigating factor was the Respondent's clean record over a lengthy career. She had also (albeit at a late stage) cooperated with the Fiscal and entered into a Joint Minute.

Censure alone would be insufficient to mark the seriousness of the conduct and protect the public. The Tribunal considered whether, in the light of the Robertson case, a censure and fine would be the appropriate sanction. It would mark the seriousness of the offence, but it would not protect the public. The risk of repetition was high. The Tribunal was not reassured by the fact the Respondent was no longer undertaking personal injury work. Failing to obtemper a mandate for two years and failing generally to cooperate and communicate were breaches of obligations that applied more widely than personal injury work. This case demonstrated an extremely prolonged failure to do very much at all. There was no suggestion that the Respondent had taken steps to change her practice. Taking on the role of Glasgow

Bar Association President when this case was still to come before the Tribunal also showed a lack of insight and concern for the reputation of the profession.

The Respondent in the Robertson case was “reckless and cavalier”. His misconduct related to one case and flowed from his misapprehension and failure to confirm he was still instructed. The present case showed a number of failures by the Respondent over a considerable period of time. The Respondent’s practice required review and supervision. A period of restriction would support the Respondent to improve the deficiencies in her practice. If she was to work under supervision, the public would not be at risk and the sanction would also uphold the reputation of the profession. The Tribunal considered whether additionally to impose a fine but concluded this would be disproportionate. The financial impact of a restriction will be significant as the Respondent will no longer be able to practise as a manager of a practice unit. Suspension or strike off would be excessive in the circumstances of this case.

SUBMISSIONS ON EXPENSES AND PUBLICITY

The Fiscal moved for expenses. He asked for the usual order for publicity but suggested that the Secondary Complainers were not named. Mr Macreath had no objection to either motion. However, he asked the Tribunal that the restriction did not come into effect for three months to allow the Respondent to dispose of her practice.

DECISION ON EXPENSES AND PUBLICITY

The effective date of the restriction will be 12 April 2022. This will allow the Respondent a short period to dispose of her practice.

The appropriate award of expenses was one in favour of the Complainers. They were the successful party. Matters had taken a long time to come to a conclusion before the Tribunal and that had largely been down to the Respondent’s conduct of the case.

Publicity will be given to this decision. It will include the name of the Respondent. The name of the Respondent’s partner cannot be anonymised (Paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980.) However, there was no requirement to identify any other person, including the Secondary Complainers, as publication of their personal data may damage or be likely to damage their interests.

The Secondary Complainers will have 28 days from the date of intimation of these findings to lodge a claim or an updated claim for compensation, if so advised.



Kenneth Paterson
Vice Chair